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THE CITY OF NEW YORK  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY  
75 Park Place, 6th Floor  
New York, New York 10007

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Telephone: (212) 788-6540  
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January 14, 1994

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 "M" Street, N.W.  
Washington, D.C. 20554

Re: Policies and Rules concerning Toll Fraud  
(CC Docket No. 93-292)

Dear Ms. Searcy:

Please find enclosed the original and four copies of the Comments of the New York City Department of Telecommunications and Energy in the above-referenced proceeding.

Should any question arise in connection with this matter, please contact the undersigned at (212) 788-6602.

Sincerely,

Susan Miller  
Policy Analyst

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JAN 14 1994

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of  
Policies and Rules  
concerning Toll Fraud

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CC Docket No. 93-292

COMMENTS OF THE NEW YORK CITY  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

The New York City Department of Telecommunications and Energy ("City of New York" or "City") respectfully submits its comments in the above-captioned proceeding.

I. INTRODUCTION

On November 10, 1993, the Federal Communications Commission ("Commission") adopted a Notice of Proposed Rulemaking in this proceeding, proposing policies and rules regarding toll fraud.<sup>1</sup> The Commission stated that the purpose of this rulemaking is to "develop effective and efficient measures to address both existing and developing toll fraud problems, without hindering the development of new technologies that provide benefits to the public."<sup>2</sup> The Commission has requested comments on proposals to:

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<sup>1</sup>Policies and Rules concerning Toll Fraud (Notice of Proposed Rulemaking), (hereinafter "Notice").

<sup>2</sup>Notice at para. 24, 25.

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(1) achieve closer coordination between the industry, consumers, vendors, law enforcement agencies, Congress, and the Commission to aid in the detection and prevention of toll fraud; (2) improve consumer education initiatives by the Commission, consumer groups, and the telecommunications industry; (3) determine that tariff liability provisions that fail to recognize an obligation by the carrier to warn customers of toll fraud risks of using carrier services are unreasonable; (4) establish a federal policy assigning liability for payphone fraud; (5) codify a requirement for written warnings for all telecommunications equipment registered under Part 68; and (6) determine measures to prevent cellular and Line Information Database (LIB) fraud.<sup>3</sup>

The City of New York commends the Commission for initiating this proceeding because as the pace and sophistication of technological advancement in the telecommunications and information fields has accelerated, so too has the pace and sophistication of toll fraud.

The City supports the Commission's decision to consider the impact of toll fraud on customers and carriers because all parties suffer the effects of fraud. The Commission now has the opportunity to address and adopt measures to combat the widespread misuse of new technology.

In these comments, the City addresses the aforementioned issues raised by the Commission in its Notice.

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<sup>3</sup>Notice at para. 1.

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## II. DISCUSSION

A. The Commission Should Establish a Public-Private Council on Telecommunications Fraud

The Commission has requested proposals to achieve closer coordination between the numerous public and private sector organizations and consumers. In order to achieve closer coordination, the City recommends that the Commission establish a public-private Council on Telecommunications Fraud ("CTF").<sup>4</sup> The CTF would include representatives from the telecommunications industry, consumers, equipment vendors, law enforcement agencies, Congress, the Commission, state, and local regulatory agencies.<sup>5</sup> The CTF would serve as a national model for state and local initiatives.

The mission of the CTF would be to provide all affected parties with direction and advice as to how to avoid or at least mitigate incidents of telecommunications fraud, and to develop industry standards and practices and, ultimately, promulgate

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<sup>4</sup>In its Notice (para. 13), the Commission recommended the establishment of a new Federal Advisory Committee representing all affected interests.

<sup>5</sup>The Commission established Network Reliability Council ("NRC") can serve as a model at a national level of a cooperative public-private effort that provides the Commission and the telecommunications industry with recommendations. The NRC makes recommendations as to how avoid and minimize public telephone disruptions and outages. In August, 1990, the former New York City Mayor, David N. Dinkins, recognizing the importance of a reliable telecommunications network to the City and State economies, established the Mayor's Task Force on Telecommunications Network Reliability, a public-private initiative.

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rules and regulations specifically targetting the fraud problem. While the telecommunications industry has addressed and resolved numerous fraud issues, there still remain fraud issues that may best be resolved with the assistance of public agency action. The Commission aptly stated the following:

Many carriers have recently responded to the widespread concerns about toll fraud by offering services designed to provide early detection and prevention of the problems. It does appear, however, that private action can not resolve all toll fraud problems or that incentives to control fraud are structured in the best possible way.<sup>6</sup>

The CTF will serve as a forum for discussions and recommendations for the issues addressed in the Commission's Notice.

The structure of the CTF would facilitate the pooling and sharing of information and ideas from diverse sources thus leading to the most effective approach in detecting and eliminating telecommunications fraud crimes. Cooperation among all sectors of the telecommunications industry, e.g. cable, telephone, cellular, PCS and other emerging wireless services, is especially important as advancing technology and changes in the regulatory regime enable companies within a given industry segment to offer new services. As companies offer new and/or combined services, they will face new security challenges, many

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<sup>6</sup>Notice at para. 6,7.

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of which are being addressed or have been addressed by other telecommunications providers. Closer corporative communication among industry segments regarding security issues will help strengthen network security and reduce the incidence of telecommunications fraud.

The City strongly endorses the Commission's recommendation to join with law enforcement authorities in "encouraging Congress to enact legislation that clearly defines and penalizes this criminal activity and gives law enforcement the tools it needs to track and prosecute perpetrators of toll fraud."<sup>7</sup> It will take more than a collaborative effort among industry participants and consumers affected by toll fraud to combat this problem. It will require meaningful enforcement of strict laws and prosecution of those who engage in criminal activities involving the use of telecommunications equipment and services.

B. The Council on Telecommunications Fraud Can Serve  
as a Forum to Improve Consumer Education  
Initiatives

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The Commission also sought comments on proposals to improve consumer education initiatives by the Commission, consumer groups, and the telecommunications industry. The City recommends that consumer education initiatives be included as a high priority in the CTF. The City applauds the Commission's

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<sup>7</sup>Notice, at para. 13.

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continuing efforts in issuing "Consumer Alerts" describing the dangers posed by telecommunications fraud and suggesting measures that can be used to detect and prevent such occurrences.<sup>8</sup> The New York State Public Service Commission, Consumer Services Division, has released its own "Consumer Alert" to warn consumers about long distance telephone fraud schemes.

The CTF could serve as a national clearinghouse for materials, such as consumer alerts and fraud avoidance techniques, gathered by and from its members. CTF outreach efforts might also be augmented at a grassroots level through state and local governments and consumer protection agencies, both public and private.

- C. The Commission Should Determine that Tariff Liability Provisions That Fail to Recognize an Obligation by the Carrier to Warn Customers of Toll Fraud Risks of Using Carrier Services are Unreasonable

The City of New York agrees with the Commission's tentative conclusion that "tariff liability provisions that fail to recognize an obligation by the carrier to warn customers of risks of using carrier services are unreasonable."<sup>9</sup> In order to protect the interests of consumers, generally, and its customers specifically, it is essential that tariff liability provisions

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<sup>8</sup>Notice. at para. 1.

<sup>9</sup>Notice at para. 24.

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obligate carriers to warn their customers of the risks of using carrier services. A carrier's failure to issue timely warnings should place the burden for all losses on the carrier and relieve any payment obligations of the user.

The Commission summarized the Chartways<sup>10</sup> and United Artists<sup>11</sup> cases and concluded that the "dispositive element in each case was where responsibility for the detection and prevention of fraudulent calling lay."<sup>12</sup> The City believes that carriers and customers each have obligations and responsibilities in detecting and redressing incidents of fraud. The City concurs in the Commission's rationale in United Artists.

If customers are unaware of potential liability, they are unlikely to take steps to limit their exposure. And, if carriers have no economic incentive to help customers limit their exposure, they are unlikely to invest in developing proactive solutions to PBX, or other, kinds of fraud.<sup>13</sup>

It is absolutely necessary that customers and carriers be aware of their responsibilities in detecting, avoiding and timely remedying, when necessary, occurrences of fraud. The City

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<sup>10</sup>Chartways Technologies, Inc. v. AT&T Communications, Memorandum Opinion and Order, FCC 93-394, (hereinafter, "Chartways").

<sup>11</sup>United Artists Payphone Corp. v. New York Telephone Co. and American Telephone and Telegraph Co., Memorandum Opinion and Order, FCC 93-387, (hereinafter, "United Artists").

<sup>12</sup>Notice at para. 24.

<sup>13</sup>Notice at para. 24.



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agrees with the Commission's tentative conclusion and supporting rationale that tariff liability provisions that fail to recognize an obligation by the carrier to warn customers of risks of using carrier services are unreasonable.

D. The Commission Should Codify a  
Requirement For Written Warnings  
for All Telecommunications  
Equipment Registered Under Part 68

The City of New York supports the Commission's proposed amendment to Part 68 of the Commission's rules requiring equipment manufacturers to provide warnings regarding the potential risk of toll fraud associated with use of equipment.<sup>14</sup> These types of warnings are reasonable and important measures for safeguarding the interests of consumers. In order to attract the attention of consumers it is essential that warnings are prominent and conspicuous, located on the exterior of the packaging and included in the instruction manuals and accompanying instructional materials provided with the equipment.<sup>15</sup> Furthermore, the City favors including in the warning, the customer's financial exposure and measures available

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<sup>14</sup>Notice at Appendix E.

<sup>15</sup>Notice at para. 40.

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to limit that exposure and measures available to limit that exposure.<sup>16</sup>

E.    The Commission Should Recommend  
        Closer Coordination Between the  
        Cellular Industry, Manufacturers,  
        Vendors, Law Enforcement Agencies,  
        State and Local Agencies, Consumers  
        and the Commission

The Commission in its Notice, requested comments on what further efforts the cellular industry, manufacturers, vendors, law enforcement agencies, and the Commission would aid in combatting cellular fraud. Included in the City's proposal to establish the CTF, the City recommends that the CTF expressly address cellular fraud issues at every level. The purpose is to increase cooperation and communication between the cellular industry, manufacturers, vendors, law enforcement agencies, state and local agencies, consumers and the Commission.

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<sup>16</sup>Notice at para. 40.

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III. CONCLUSION

In conclusion, the City of New York respectfully urges the Commission to adopt the proposed policies and rules concerning toll fraud as addressed herein. We believe that the coordination of efforts among all parties affected by toll fraud will be the most effective strategy to address and resolve telecommunications fraud.

Respectfully submitted,

NEW YORK CITY DEPARTMENT OF  
TELECOMMUNICATIONS AND ENERGY



Thomas J. Dunleavy  
Deputy Commissioner



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Dated: January 14, 1994